

Statement of Richard Eiswerth
President, General Manager and CEO
Cincinnati Public Radio
1223 Central Parkway
Cincinnati, Ohio 45241

June 28, 1007

Testimony before the House Small Business Committee
Impact of March 2, 2007 Copyright Royalty Board Decision

Madam Chair, Ranking Republican Chabot and Members of the Small Business Committee, my name is Rich Eiswerth and I am the President, General Manager and CEO of Cincinnati Public Radio, which is the broadcast license holder for 90.9 WGUC and 91.7 WVXU, serving the Greater Cincinnati community with the finest in classical music, news, information, and entertainment programming. I'm testifying today on behalf of NPR - National Public Radio - its member stations and non-member public radio stations eligible to receive funding from the Corporation for Public Broadcasting (CPB).

WGUC, Cincinnati's Classical Public Radio, was founded in 1960 by a group of citizens who saw the need for a radio station devoted to cultural and public affairs programming in the region. Favorites from classical music's masters as well as less widely known treasures from the repertoire combine to provide a rich and enlightening musical journey for WGUC's listeners. In addition, many of Cincinnati's superb musical performing arts organizations can be heard on WGUC. The station is committed to making these live performances more widely available to everyone in the community. WGUC's live signal can be heard over the Internet at www.wguc.org. Here WGUC has established a dynamic resource for its online community of classical music lovers and fans of public radio.

Cincinnati Public Radio broadcasts and webcasts every concert by the Cincinnati Symphony Orchestra, the Cincinnati Opera, and the May Festival, which is the oldest choral festival in the US. We also operate www.classicsforkids.com which is a web-centric classical music educational resource used by more than 2600 teachers and 329 parents in all 50 states and more than 25 foreign countries. More than 650 schools in the Greater Cincinnati area, serving 50,000 students, have also been served through the Classics for Kids website and educational materials. Additionally, 5,600 individuals, primarily teachers and parents, from across the country receive *Of Note*, Classics for Kids' e-mail newsletter and educational materials.

I want to thank you for the opportunity to comment on the misguided decision by the Copyright Royalty Board (CRB) and its implications for America's public radio stations. The fundamental flaw of the CRB decision is its treatment of public radio stations as commercial entities. If unchanged by the Congress, or the Courts, the Board's decision will degrade the public radio system through dizzyingly complex reporting requirements and dramatic and inappropriate increases in royalty fees from public radio stations.

Although each of our Nation's 850 public radio stations operates as a non-commercial, not-for-profit entity, there are similarities between our stations and the country's many small businesses. A typical public radio station has between 10 and 14 employees and operates with an annual budget of \$890,000. Again, on average, public radio stations receive between 11 and 13 percent of their annual budgets from funds appropriated by the Congress to the Corporation for Public Broadcasting (CPB) in the form of community service grants. The remaining funds are sourced this way: 33 percent come through contributions from listeners and supporters in our communities; roughly 20 percent from local businesses; and the remaining operational funds come from our licensees, state and local governments, and foundations and non-profit associations.

Madam Chair, National Public Radio, Inc. (NPR), with the support of the Corporation for Public Broadcasting, participated in the Copyright Royalty Board proceeding on behalf of its member stations and non-Member stations eligible to receive funding from CPB. These stations vary enormously in size and audiences served, but every one of them is dedicated to the public service mission set out in the Public Broadcasting Act: expanding the diversity of programming; providing programming that involves creative risks and addresses the needs of unserved and under-served audiences; and reaching the broadest audiences possible. Or put another way, our stations exist to "constitute an expression of diversity and excellence, and which will constitute a source of alternative telecommunications services for the citizens of the Nation."

The CRB's decision creates impossible barriers for public radio stations to achieve our public service mission. Application of commercial rates and complex calculations to compute those rates will drain scarce financial resources and distract stations from their public service missions. The more Americans who listen to our stations' music webstreams, the more we owe in royalties. In other words, as we seek to fulfill our congressional mandate of reaching the broadest audience possible, we are financially punished.

The rate structure in the CRB decision imposes additional fees for listeners or songs in excess of an arbitrary number. This concept is nearly identical to the CRB's treatment of commercial webcasters. When faced with the double demands of increased costs and complex rate calculations and record keeping, many stations will no doubt be forced to place artificial limits on their website visitors. Forcing a cap on usage by public radio webcasters is antithetical to the very purpose of public radio. There is no cap on public radio listening. Why should there be one on Internet listening? And the comparison by the CRB of public radio music webcasters with commercial entities is similar to comparing the public library with Barnes & Noble. Placing limits on public webcasters' music offerings or online users makes as much sense as placing limits on the number of books a public library may have or the number of visitors who have access to those books or the number of books that may be read by that library patron.

The variable nature of the CRB's proposed fee arrangement, which requires complicated listening calculations of public radio stations to track how many people are listening to specific music tracks at specific times, presents significant problems. Royalty fees for public radio stations have been paid by the Corporation for Public Broadcasting (CPB) through funds appropriated annually by Congress. And Congress has directed CPB to set aside 6% of certain appropriated funds to pay for key elements of the public broadcasting system including "the payment of programming royalties and other fees."

But out of this same pool of money, Congress has directed CPB also to pay for capital costs of telecommunications satellites, interconnection facilities, grants for programs in languages other than English, training for public broadcast employees and other projects that enhance public broadcasting. Each dollar taken from this pool of funds to pay for unreasonable licensing fees is a dollar not available for another project to enhance public broadcasting for the ultimate benefit of American listeners and viewers.

It is impossible for CPB to control or project the growth of public radio music webcasting from year to year, and consequently, how much, if any, annual royalty payments will increase during the license term. CPB would be forced to reserve sufficient funds on its books to guarantee that it could satisfy the ultimate payment obligation, whatever that may be. The nature of the legal obligation to pay these fees would necessitate that CPB reserve the greatest amount that could conceivably be owed, which would, in turn, make it difficult or even impossible to properly commit those funds in excess of the ultimately-determined payment obligation to other deserving projects. For this reason, a fixed fee approach to stream music that can fairly compensate artists and labels and allow public broadcasters to continue to serve the American public is the right outcome.

It is important to put the fee structure sought by public broadcasters in its proper historical context. Enacted in 1976, Section 118 of the Copyright Act established a compulsory license for the transmission of musical compositions by public broadcasters. A Copyright Royalty Tribunal proceeding followed and a flat fee approach, below commercial rates and in line with the public service obligations of public radio, were set. Public Broadcasters and the respective performing rights organizations, (PRO's) which are ASCAP, BMI, SESAC and Harry Fox Agency, negotiated agreements within this structure for nearly two decades thereafter. In 1998, because the parties could not agree during negotiation, a Copyright Royalty Arbitration Panel determined the applicable rate. It set a single flat fee for public radio and television which recognized the significant differences between noncommercial and commercial broadcasters. Since that time, the PROs and public broadcasters have successfully negotiated flat fees for two additional five-year license terms. Flat fee agreements have been negotiated multiple times with the same parties to stream musical compositions over the Internet. In 2001, RIAA signed a flat fee agreement with public radio enabling us to stream sound recordings from 1998 through 2004.

The flat fee concept and payment structure, not the punitive, variable scheme of the CRB, serves the public well by enabling public radio music webcasters to bring unmatched diversity to online listeners. Properly adjusted for inflationary impact, it also offers artists and musicians just compensation for their efforts and talents.

Madam Chair, unless corrected by Congress, this decision will have profoundly negative effects for the future of public radio music webcasting, effects that will be felt by our listeners and by the artists and musicians whose musical works often get first exposure on our stations. The programming diversity and new music discovery that is at the heart of public radio's programming can only be hurt by the CRB's treatment of us as commercial entities. We need you and your colleagues to support and pass Congressman Inslee and Manzullo's legislation, H.R. 2060, the Internet Radio Equality Act.

This legislation deals appropriately with royalties for sound recordings by recognizing the public service mission of public radio. It offers all parties the necessary long-term solutions that are now essential because of the CRB decision. It brings the royalty proceedings for determining sound recording fees in line with the proceedings used to determine royalties for musical works. And with the July 15th deadline for payment of new royalties looming, there is a growing urgency that Congress take action to address this situation.

It is worth noting that President Lyndon B. Johnson, in signing the Public Broadcasting Act of 1967 stated “I believe the time has come to stake another claim in the name of all the people, stake a claim based upon the combined resources of communications. I believe the time has come to enlist the *computer* and the satellite as well as television and radio, and to enlist them in the cause of education...so I think we must consider new ways to build a great network for knowledge – not just a broadcast system but one that employs every means of sending and storing information that the individual can use” (emphasis added).

Madam Chair and Congressman Chabot, we in public radio take seriously and fully embrace the obligations of the Public Broadcasting Act’s charge that we reach the broadest possible audience. We are committed to a course of action that upholds the high standards for public broadcasting envisioned by the Congress and practiced by public radio stations for the past four decades. We ask that you recognize our unique stature and dedication to public service and assist us in our pursuit of these important civic responsibilities by acting promptly on H.R. 2060.